

POPULAR GOVERNMENT



PUBLISHED MONTHLY BY THE

INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

POPULAR GOVERNMENT

VOLUME 12
NUMBER 7

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
THE UNIVERSITY OF NORTH CAROLINA
CHAPEL HILL

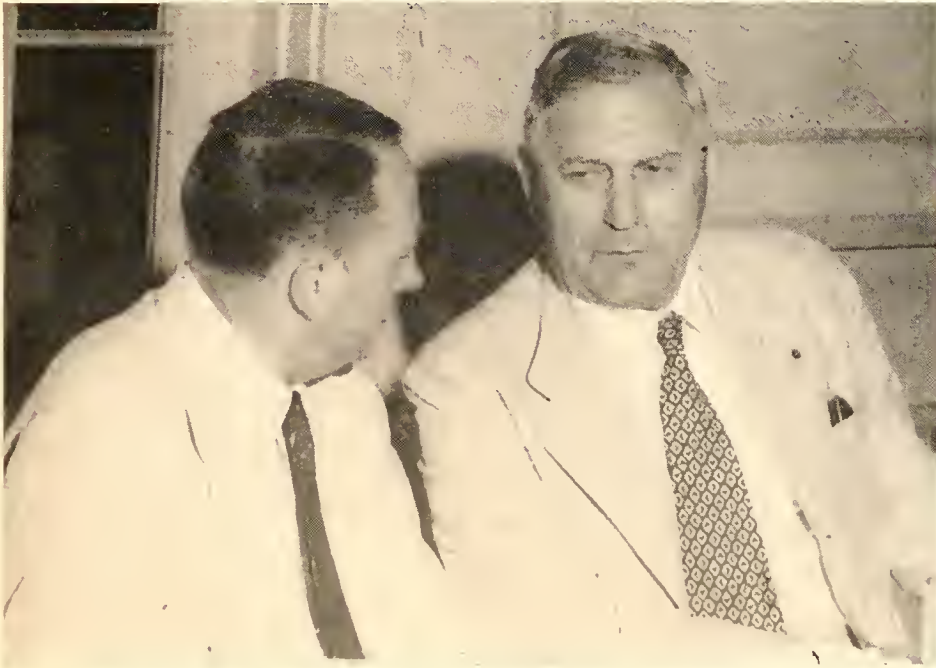
AUGUST
1946

Albert Coates, Editor; W. M. Cochrane, Managing Editor
Assistant Editors: Peyton B. Abbott, Louis A. Cherry, Samuel R. Leager, Henry W. Lewis,
Clifford Pace, Terry Sanford, David H. Scott

TABLE OF CONTENTS

I. POLICE EXECUTIVES INSTITUTE	Page One	COVER PICTURE <i>Tobacco</i> is a key word in the personal economy of hundreds of thousands of North Carolinians. It accounted last year for 51 per cent of North Carolina's agricultural income. It gives North Carolina two of her leading "firsts" in the South and in the nation: in volume of tobacco produced, and in volume of tobacco manufactured. By far the greatest proportion of tobacco produced in this state is flue-cured. Late in August, as crews of buyers moved north into the Bright Belt markets of eastern North Carolina (from which they will go west into the Middle and Old Belts), they were set to bid on the fruits of labor expended on 807,000 acres of North Carolina soil, from which have come an estimated record 870,600,000 pounds of flue-cured tobacco. (Photograph by Wootten-Moulton)	V. THE ENERGIES OF PEACE- TIME	Page Eight
II. SUPERIOR COURT CLERKS' CONVENTION	Page Three		VI. INSTITUTE ANSWERS TO OFFICIAL INQUIRIES	Page Nine
III. INDEX OF LOCAL LAWS TO BE PUBLISHED BY OFFICE OF SECRETARY OF STATE	Page Five		VII. MUNICIPALITIES AND THE LAW IN ACTION	Page Ten
IV. THE CLEARING- HOUSE	Page Six		VIII. THE ATTORNEY GENERAL RULES	Page Sixteen

Police Executives Institute



Governor R. Gregg Cherry (right), and Albert Coates, Director of the Institute of Government.

Shown here are pictures of the Police Executives Institute which was conducted for the North Carolina Police Executives Association by the Institute of Government in Chapel Hill on July 17th and 18th. More than one hundred police executives from all over the State registered for the Institute to discuss and receive instruction in problems of immediate practical importance in their work, including police organization and personnel, police operations, and methods of maintaining law and order, and to outline plans for statewide, district and local

training schools to be conducted by the Institute of Government.

John M. Gold, Winston-Salem chief of police and President of the Police Executives Association, opened the meeting with an expression of the need for police organization and for continuous conference on police problems. SBI Director Walter F. Anderson discussed the work of his bureau and pointed out channels of cooperation between it and local law enforcement agencies. A. E. Leonard, FBI lecturer on police administration and operations, led discussions on techniques



Hugh H. Clegg, Assistant Director of the FBI and Director of the FBI's National Police Academy.

and methods of improving police administration in cities and towns.

Speaking at the dinner meeting of the group on July 17th, Governor Cherry congratulated the group on the progressiveness and alertness demonstrated by their presence at the meeting. He made a specific appeal to the officers to join wholeheartedly in the State and nationwide street and highway safety program. The Governor expressed assurance that through the schools held here, through district schools





The Training Committee which will work with the Institute of Government in its training program for law enforcement officers: Sam R. Churchill, outgoing president of the Sheriffs' Association; Albert Coates; John M. Gold, outgoing president of the Police Executives' Association; Walter Anderson, Director of the State Bureau of Investigation; Edward Scheidt, Special agent in charge of the FBI in North Carolina; and Colonel H. J. Hatcher, Commanding officer of the State Highway Patrol.

over the State, and through local schools in every locality, safety on our streets and highways can be nurtured, developed and perfected. As the officer charged with the principal responsibility for safety on the highways of the State, Colonel H. J. Hatcher, Commanding Officer of the Highway Patrol, brought to the meeting indications of the alarming increases in highway deaths and injuries and the plans and pledge of his group to reduce the number of accidents.

Pointing out that local law enforcement agencies constitute the keystone of the crime prevention and law enforcement arch, Hugh H. Clegg, Assistant Director of the

FBI and Director of the FBI's National Police Academy in Washington, told the officers that a constantly efficient performance on their part would forever prevent the development of the strong central police noted in the totalitarian countries. Mr. Clegg's discussion was directed particularly to law enforcement problems which can be anticipated during this period immediately following the war.

Securing from the police chiefs and other police executives their advice as to length and particular content of courses, Albert Coates, Director of the Institute of Government, outlined with the group the plans for Institute training schools

throughout the State during the coming months.

The Institute was concluded with the election of the following officers of the Association for the coming year: J. R. Thomas, President; Walter F. Anderson, First Vice-President; L. L. Jarvis, Second Vice-President; Frank N. Littlejohn, Third Vice-President, and D. T. Lambert, Secretary-Treasurer.

Registering for the Institute were the following: Walter F. Anderson, Director SBI, Raleigh; G. H. Andrews, Sheriff, Chatham County, Pittsboro; R. C. Barlow, Captain of Police, Winston-Salem; C. O. Benfield, Chief of Police, Granite Falls; Fred A. Bigsby, Chief of Police, Drexel; H. L. Browne, Special Agent, FBI, Durham; W. R. Burke, Captain of Detectives, Winston-Salem; D. T. Butler, Chief of Police, Burlington; G. E. Canady, Chief of Police, Kinston; M. M. Carstarphen, District Forest Ranger, Rocky Mount; W. C. Carter, Sgt., SHP, Oxford; J. L. Cash, Chief of Police, Oxford; C. H. Casteen, Chief of Police, Wilmington; A. H. Clark, Sgt., SHP, North Wilkesboro; T. E. Cook, Sgt., SHP, Wilmington; J. L. Craven, Sgt., SHP, Burlington; Stanley E. Crisp, Chief of Police, Lenoir; S. R. Churchill, Sheriff, Lenoir County, Kinston.

Michael P. Clayton, Police Dept., Greensboro; Guy R. Duncan, Sgt., SHP, Morganton; William S. Edmunds, District Forest Ranger, Whiteville; J. C. Elliot, Chief of Police, Gastonia; M. S. Fairecloth, Chief of Police, Wrightsville Beach; Chas. D. Farmer, Captain SHP, Raleigh; W. R. Farrar, Deputy Sheriff, Chatham County, Pittsboro; N. T. Faulkner, District Forest Ranger, Rockingham; H. R. Fremoyer, Sgt., SHP, Salisbury; Samuel L. Gaynor, Jr., Asst. Director, Highway Safety Division, SHP, Raleigh; John G. Gibbs, Sgt. Police Dept., Lenoir; F. E. Gibson, Sgt. of Detectives, Greensboro; John M. Gold, Chief of Police, Winston-Salem; Robert E. Goodwin, Captain of Detectives, Raleigh; L. W. Hall, Chief of Police, Chadbourne; Ralph Handsel, Chief of Police, Stanley; W. K. Hardin, Chief of Police, Shelby; R. R. Hargrove, Chief of Police, Raleigh.

C. C. Harris, Asst. Chief of Police, Henderson; R. S. Harris, Sgt., SHP, Durham; H. J. Hatcher, Major, SHP, Raleigh; W. L. Hatcher, Sgt., SHP, Shelby;

(Continued on page 7)



Superior Court Clerks' Convention

The twenty-eighth annual convention of the Association of Superior Court Clerks of North Carolina was held in Greensboro on June 26, 27 and 28. All sessions were held at the O. Henry Hotel, and in the absence of J. Floyd Barden of Wayne County, president of the association and C. G. Smith of Iredell county, first vice-president, L. C. Hand of Gates county, second vice-president, presided.

The convention got under way with registration at 5:00 p.m. on Wednesday, June 26. The first session was called to order at 8:00 p.m. when addresses of welcome were made by Herman C. Wilson, Greensboro City Attorney, and J. P. Shore, host clerk of Guilford county. Response was by T. C. Bethea, of Rockingham county. Following announcements relative to the program for the next two days, the session was adjourned until 10:00 a.m. the following morning.

Judge Hubert E. Olive—Probate of Wills

The Thursday morning session was devoted to the discussion of problems relating to the probate of wills, which was led by Superior Court Judge Hubert E. Olive. Judge Olive was introduced by E. C. Byerly, Clerk of Davidson County Superior Court. Sample topics discussed:

What is the preferred practice where a certified copy of a will is sent to another county? Consensus was that the preferred practice is to send a copy of the will together with the probate and application.

Should witnesses to an attested will be required to swear that at the time of execution of the will the testator was of sound mind? It was pointed out that the statute on probate, G.S. 31-18, does not require such testimony on the part of attesting witnesses, but that the oath set out in the oath statute, G.S. 11-11, is so framed as to require attesting witnesses to swear concerning the mental capacity of the testator. It was further pointed out that many attesting witnesses are not personally acquainted with the testator but

may be called in and introduced solely for the purpose of having them witness the will. They may have insufficient opportunity to observe the testator to form an opinion of his mental capacity, and some witnesses are unwilling to swear that the testator has sufficient mental capacity or was of sound mind. Consensus of opinion was that the two statutes should be harmonized, and preferably by eliminating from the oath statute reference to "sound mind". That part relative to the testator's mental condition can be raised and decided in a caveat proceeding.

A will has 3 attesting witnesses; A, B, and C. C is also a beneficiary under the will but does not have to take part in the probate of the will as the will is probated upon the testimony of A and B. Does C lose his legacy? Consensus: Yes. The statute, G.S. 31-10, which renders the interest of an attesting witness void, deals with the execution and not probate.

Can different witnesses be used to prove the handwriting of the testator and deceased attesting witnesses? Consensus: Yes.

A holographic will was deposited with a beneficiary for safe keeping. Can the beneficiary with whom the will was deposited testify to this fact? No. The testimony of the beneficiary would be excluded under the "dead man's sta-

tute," G.S. 8-51. But if a third person who was not interested was present when the will was deposited with the beneficiary such third person might testify.

A will was executed by a former member of the armed forces and while the testator was a member of the armed forces. After the testator was no longer a member of the armed forces, he died and the witnesses to the will are unavailable. How can the will be probated? It was pointed out that this very situation was anticipated and G.S. 31-26 was amended by the 1945 Legislature so that such a will may be probated upon the proof of the handwriting of the testator by 3 credible witnesses.

Peyton B. Abbott—Powers of Clerks

The Thursday afternoon session opened with a discussion of the clerk's powers in civil actions, conducted by Peyton B. Abbott of the Institute of Government. Mr. Abbott pointed out certain provisions of the Constitution of 1868 which were designed to simplify judicial proceedings and to expedite and lessen the cost of litigation in the courts. He stated that, in keeping with the spirit and purpose of the constitutional changes, the Code of Civil Procedure of 1868 was adopted, and that this Code vested in the clerks of the Superior Court the ne-



Elected to serve as officers of the Association for 1946-47 were (left to right): L. C. Hand, Gates County, First Vice-President; Joseph P. Shore, Guilford County, President; E. A. Houser, Cleveland County, Second Vice-President; and W. E. Church, Forsyth County, Secretary and Treasurer.



Peyton B. Abbott, Assistant Director,
Institute of Government.

cessary power to expeditiously dispose of civil litigation or to pass upon preliminary and incidental matters to the end that all issues may be fully joined and the case readied for trial. The speaker suggested that since the Constitution provided for the rotation of judges and that "The Superior Courts shall be, at all times, open for the transaction of all business within their jurisdiction, except the trial of issues of fact requiring a jury," (Art. IV, sec. 22), and only two two-week terms were required to be held in each county per year, it was necessary that extensive powers be vested in and exercised by the clerks in order to keep civil litigation moving along efficiently without those "law's delays" of which the layman so often justly complains.

Attention was called to certain "basic" or definitive sections of the original Code, such as section 9 (now G.S. 1-7) and section 108 (now G.S. 1-13). The first provides: "In those of the following enactments, which confer jurisdiction or power, or impose duties, when the words Superior Court, or 'Court,' in reference to a Superior Court are used, they mean the Clerk of the Superior Court, unless other-

wise specially stated, or unless reference is made to a regular term of the Court, in which case the Judge of the Court alone, is meant." The second reads: "The Clerk of the Superior Court shall have jurisdiction to pass upon all questions of practice and procedure, arising in actions brought to this Court, and on all other matters whereof jurisdiction is hereby given to the Superior Court, unless the Judge of said Court, or the Court at a regular term thereof be expressly referred to." After referring to particular statutes empowering the clerk to act in various stages of litigation, the speaker pointed out that the chief limitations upon the clerk's powers in civil actions were that he could not pass upon issues of law (raised by demurrer) which are for the judge to decide in the first instance, or issues of fact (raised by the pleadings) which are for the jury. Otherwise the clerk's powers in civil actions are practically the same as in special proceedings, with provisions for easy and quick appeal from any decision of the clerk to the judge at any stage of the proceeding and an early decision thereon so that the proceedings may be carried forward without lying idle until the next term of court.

Although the present law contains substantially the same procedural provisions relative to the clerk's powers in civil actions as the original Code of Civil Procedure, many of those powers are relatively unused. Mr. Abbott advanced two principal reasons why the practice has so far departed from the course of procedure originally provided. First, successive codifications of the law have, while retaining the original provisions of the Code of Civil Procedure, so shifted them about and rearranged their order of appearance in the statute books that a clear picture of the intended mechanics of the procedure is no longer presented. That is, the procedural provisions are no longer set out in proper sequence, but are broken up and widely scattered. Second, and more important, was the effect of the "suspension act" of 1868-69, commonly call the "Batchelor Act," its incidental effect on the clerk's powers in civil ac-

tions, the habits and customs which developed while it was in effect, and the undramatic manner in which it was finally repealed by the "Crisp Act" in 1919.

About seven months after the adoption of the Code, and before a pattern of practice had time to develop thereunder, the "Batchelor Act," which was frankly designed to provide delays and slow up civil actions in view of the impoverished condition of the people of the State at the time, was enacted. The principal and most lasting provisions of that act did no more on their face than to make the summons returnable at term instead of before the clerk and to require pleadings to be filed at term instead of before the clerk, in civil actions but not in special proceedings. But the incidental effect of those provisions was to oust the clerk's jurisdiction over all preliminary matters in civil actions with relation to the pleadings, for since the pleadings were not before the clerk, he was not called upon to act. And so the practice developed of taking all questions of pleading and practice in civil actions to the judge at term time rather than having the questions passed upon by the clerk. The "Batchelor Act" by its own terms was a temporary measure, to expire on January 1, 1871. But, as pointed out by Chief Justice Clark in *Campbell v. Campbell*, 179 N.C. 415 (1920): "Owing to the financial conditions of the times, it was later continued indefinitely, and then by oversight, though contradictory to the concept and intent of the Code of Civil Procedure . . ."

The "Batchelor Act" was finally repealed by the "Crisp Act" of 1919, but the latter Act was not generally recognized as effecting any greater change in procedure than indicated by a literal reading of its provisions, and the provisions which caught the eye of courts and lawyers alike were those requiring summons to be returnable and pleadings filed before the clerk rather than at term time. These provisions were promptly put into effect, but partly because of some confusion as to when the return day should be and other related problems which directed at-

(Continued on page 12)

Index Of Local Laws To Be Published By Office Of Secretary Of State

Project Was Started Years Ago by State Employee With Initiative

As told to Clifford Pace, Asst. Director, Institute of Government.

Here is the story of the bright-eyed, chipper little lady shown in these pictures at her desk and with her card files in her office in the Secretary of State's Annex. She is Mrs. Elizabeth Bellamy Peele, and her story illustrates better than any we have heard the way in which progress in governmental processes can and does grow out of the minds and experience of governmental officials and employees. Mrs. Peele is retiring under the Teachers and State Employees Retirement System at the end of this fiscal year after twenty-four years of service.

"Let's see, Mr. R. D. W. Connor was head of the Commission then, I think, though he may have been in Europe by then and Mr. Hill may have been serving as head. Anyway, W. S. Wilson was serving as first Secretary of the library, and I believe it was that year that W. T. Joyner was in the Library as an assistant assigned to help with drawing bills. That was the function of the Library. It employed trained lawyers and others to study laws of other states before the General Assembly opened and to help prepare similar legislation for this



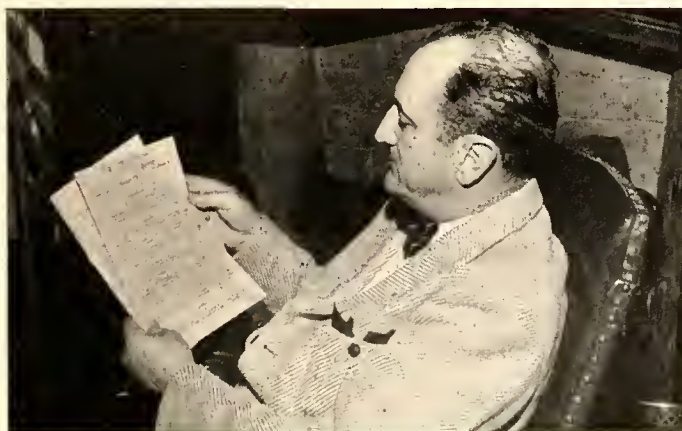
State. And when the General Assembly was in session the Library staff helped the members draw their little local bills.

"Well, I worked with the Library during the regular session that year, and then there was a special session that winter. I went back to work in the General Assembly for the special session and they sent me over to the Legislative Reference Library again. And, you know, I just never did leave. Henry London came in as a Secretary about that time. Yes, I kept right on working with the Library in 1922, and
(Continued on page 14)



"Lawsy me, I didn't know what I was getting into back there when I started this thing," Mrs. Peele said.

"My husband, W. J. Peele, was a lawyer practicing here in Raleigh. He had died in 1919. I went to work in the Legislature of 1921 and they sent me over to the Legislative Reference Library. I knew about the Legislative Reference Library. Mr. Peele was on the Historical Commission and he had been one of those responsible for starting it. He was interested in law-making and bill-drafting.



Secretary
of
State
**THAD
EURE**

THE CLEARINGHOUSE

News of Developments Here and There

Airports—"The governing body of any city or town in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft, either within or without the limits of such cities and towns and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such city or town. It is from this subsection of the General Statutes of North Carolina (G.S. 63-2) and the following one (G.S. 63-3) which substitutes the word "county" for "city or town," that counties, cities and towns in North Carolina derive their authority to own and operate municipal airports.

Statewide interest in community airports, translated into action by the end of the war, is continuing and increasing. Movements are now under way for municipal airports at Elizabethtown, where air-minded citizens met at the courthouse July 31 to discuss ways and means of raising local funds to match Federal grants; in Haywood County, where hundreds have signed petitions calling on the county and town governing boards of Waynesville, Canton, Hazelwood and Clyde to match \$275,000 of Federal funds already appropriated for the purpose; and Wilkes County, where the Wilkes Chamber of Commerce and interested citizens consider the need for an airport "desperate."

County and City Tax Rates—In the face of the universal trend toward higher costs for everything, a few cities and counties in North Carolina have been able to lower their tax rates for 1946-47. Many more managed to hold the level of last year's levies, but the majority were forced by increasing expenses to raise their rates.

W. M. COCHRANE

Assistant
Director
Institute of
Government



Among the counties reducing tax rates are Wake, where ABC store receipts made possible a \$0.02 reduction, despite salary raises; and Beaufort, where increased valuations and additional revenue from other sources resulted in a \$0.24 decrease.

Among the counties holding last year's tax rates are Orange, although salaries and wages for county employees were increased; Brunswick; Buncombe; Columbus; Halifax; Hyde; Iredell; Lenoir; Macon; Madison; Martin; Perquimans; Person; Richmond; Sampson; and Vance. Cities and towns making no change are Burlington, although their police salaries were raised on a sliding scale based on the length of service; Fayetteville, in spite of salary increases for police and firemen; Durham; Lillington; Statesville, where on August 20 citizens will vote on a \$500,000 bond issue for water system extension; Highlands; Wilmington, where a bond election involving \$1,003,000 for improvements was approved by a three to one vote May 29; Monroe; and Warrenton.

Among the counties raising their tax rates are Alamance, where generally increased costs and salary raises called for an increase of \$0.20; Anson, for increasing public school current expenses, \$0.10; Ashe, school purposes, \$0.25; Bladen, building and maintenance of school property, \$0.20; Caswell, debt service, school and welfare increases, \$0.20; Catawba, salary

raises, board of appraisals, terracing unit and school property purchase expenses, \$0.08; Chowan, \$0.05; Hertford, debt service and health fund increases, \$0.02; Johnston, generally increased costs, \$0.15; Lee, installation of the health department, \$0.05; Randolph, debt service, \$0.15; Warren, school purposes, \$0.25; and Wayne, salary increases and school purposes, \$0.15.

Municipalities raising their tax levies include Graham, because of generally increased costs, \$0.30; Washington, for new equipment and drainage and street repair and improvement, \$0.50, with an election scheduled for August 20 involving \$400,000 in bonds for water and light plant improvements; Lexington, repair and expansion of sewer and water systems, \$0.20; Winston-Salem, to balance the budget in the face of rising costs, including salary increases, \$0.30; Greensboro, for salary increases and other rising costs, \$0.10; Smithfield, to meet 10 per cent pay increases for most employees, \$0.10; Franklin, for debt service and street and water improvements, \$0.20, with the citizens having approved by a 27-1 vote June 25 a bond issue of \$120,000 for water, sewer and street purposes; Charlotte, for 15 per cent pay raise and other costs, \$0.10; Roxboro, \$0.05; Clinton, for purchase of equipment and increased labor costs, but not for city officials' salary increase, \$0.45; and North Wilkesboro, for improvements and to meet rising costs, \$0.30.

Other bond elections were scheduled or held at: Tarboro, where the voters approved in June issuance of \$250,000 in bonds for erection of a municipal hotel; Harnett county, where the voters on August 6 were scheduled to decide on a \$750,000 bond issue for new schools and other improvements; and the city of Lenoir, with an election planned for August 27 on a \$700,-

000 bond issue for improving and enlarging the street, water and sewer systems, garbage disposal facilities and the city airport.

County Records—Modern machines and techniques applied to two county governmental functions showed their value last month in Forsyth and Brunswick. In a statement to Board of County Commissioners reported in the Winston-Salem Journal, retiring Tax Collector Kenneth Pfohl said that city-county tax records checked out to the penny for the first time within the memory of any of the office employees, and "it is the machines which find the errors."

And the State Port Pilot reports that during July all old records of Brunswick county prior to 1850 were microfilmed at the rate of about 400 photographs to the hour, each photograph covering a page of the records. The films will be kept in the State Department of Archives at Raleigh, and the work is being done to eliminate possibility of old and valuable records being lost in any manner. In addition to this safety advantage, the micro-filmed material will occupy storage space only a fraction as large as the original records, but still can be projected and copied readily and quickly.

Fire Prevention—Durham's City Council is studying a proposed ordinance which would create there a Bureau of Fire Prevention, to operate under a chief appointed by the Fire Department Chief, and to be charged with making and enforcing fire prevention and safety regulations for the city. The Bureau, with technical inspectors selected from within or without the Fire Department after competitive examination, would have duties involving enforcement of all ordinances and regulations affecting the following: Fire prevention; storage and handling of inflammables and explosives; installation and maintenance of automatic and other private fire alarm and extinguishing equipment; maintenance regulation of fire escapes; adequacy of exits from all buildings used by the public, both commercial and public; and

investigation of the origin and circumstances of fire.

The proposed ordinance would provide also for a committee composed of the city building inspector, fire chief, and chief of the Bureau of Fire Prevention, which would specify any new materials, processes, occupancies or trades which would require permits in addition to those listed in the ordinance.

Juvenile Delinquency—Law enforcement officers, judges, public welfare officials, newspaper editors, preachers and other public citizens lately have been swamping the press, radio, rostrum and pulpit with avowals of their alarm at the nation-wide upswing in juvenile delinquency. Most of them pin most of the blame on the parents and conditions in the homes from which these youthful criminals come. A recently completed study made for the State Department of Public Welfare by Dr. Wiley B. Sanders of the University of North Carolina shows that during the past five years nearly one-half of the juvenile offenders in this state have come from homes broken by separation of the parents. Judge Mamie Dowd Walker of Durham's Juvenile Court last month attributed the rise in cases in her court to delinquency in the parents rather than delinquency in the children. In Winston-Salem the health and welfare committee of the Grand Jury called for establishment of a domestic relations court there to bring parents to account for their "recklessness, indifference, carelessness and lack of supervision of their children."

In response to the nation's unanimous demand that something be done to put a stop to youthful lawlessness, the Federal Government is sponsoring a national conference at Washington in October to review the whole teen-age crime problem, prepare to combat it and recommend any needed legislation, state and federal. Representatives of law enforcing and welfare agencies of the federal, state and local governments, judges and leading members of the bar, educational and religious leaders, and authorities in child welfare fields will come together to work out a program of action.

THE INSTITUTE'S NEW CHART OF BEER AND WINE LAWS

In July the Institute of Government distributed to all interested officials a chart setting forth the laws (as given in the General Statutes) relating to the licensing, by cities and counties, of retailers of beer and wine. The purpose of the chart, which was prepared by Samuel R. Leager, of the Institute staff, is to give easily and quickly found answers to the principal questions which arise in administering the beer and wine licensing laws, and it is hoped that by bringing together in one place the statutory provisions concerning each administrative problem, cities and counties concerned with the licensing of retailers of beer and wine will be able more easily to determine the extent of their authority to grant and revoke licenses and to regulate the conduct of places where beer and wine are sold.

The chart is divided into two main columns—Administrative Questions, which contains questions arranged in the order in which they are likely to arise concerning any one license; and Statutory Provisions, which gives, opposite the particular question, the statutory answers to that question, as applied first to beer and then to wine. One section of the chart, entitled Local Modifications, is devoted to special powers, different from the general state law, which have been granted by the legislature to particular municipalities and counties. It will be brought up to date after each session of the Legislature.

If you should desire a copy of this chart, please write the Institute of Government, Chapel Hill.

Police Executives

(Continued from page 2)

J. H. Hayes, Lt., Police Dept., Raleigh; H. T. Hines, Chief of Police, Goldsboro; I. E. Hunt, Sgt., SHP, Wadesboro; L. L. Jarvis, Chief of Police, Greensboro; William F. Jennings, Capt. of Det., Greensboro; Joe Edward Johnson, Chief of Police, Mt. Olive; W. C. Johnson, Capt. of Police, High Point; Lester Jones, Lt., SHP, Greenville; W. B. Kelly, Sgt., SHP, Carthage; H. E. King, Chief of Police, Durham; D. T. Lambert, Lt., SHP, Greensboro.

(Continued on page 8)

The Energies of Peacetime

By R. B. HOUSE

Chancellor of the University of North Carolina at Chapel Hill

"This habit of reading, I make bold to tell you," says Anthony Trollope, "is your pass to the greatest, the purest, and the most perfect pleasures that God has prepared for his creatures. —It lasts when all other pleasures fade."

Among the energies desired in peace time is the quiet, steady, shaping force of sincere love of fine things. Of all fine things created by the genius of man, the finest and most readily available is the book. And of all books the greatest by any test is *The Bible* because it presents the full history and method and the full promise of fulfillment of all loves: the Love of God. *The Bible* also has a way of being the easiest of all books to find anywhere. Unfortunately the art of reading it is not so automatic as the habit of placing the book itself in convenient places. I hope the Gideons will never get discouraged about placing Bibles in hotel rooms, even though few of the copies I have had a chance to examine ever seem to be worn from use. We like novelty, fresh jackets, and colorful bindings. The sober, staid familiar look of the usual cover of *The Bible* is against it in this respect. But once opened and begun the power of its matter overwhelms that of any other book. Here is the most interesting and significant story ever told, with the greatest of all heroes and the greatest of all happy endings. Also it presents in their finest forms every type of poetry and prose. Men have died for the right to print it; it is a pity if modern man is too trivial minded to read it.

For *The Bible* contains the nature and method of the greatest energy known to man,—the power of God. The atomic bomb is so dramatic and portentous that almost every speaker and writer has said something about it in the past year. And the remarkable, but natural thing about



all the sayings is that they begin with atomic power and end with divine power. General MacArthur, Albert Einstein, Dorothy Thompson, Drew Pearson are samples of the range of practical, theoretical, and journalistic personages who begin with the atom and end with God.

Drew Pearson says:

"The question of the abolition of war gets down to the basic rules of Christ's Sermon on the Mount. How we are to apply that I do not know. What I do know is that we must do it or see civilization vanish from the earth."

I do not know how to apply the "basic rules" of the Sermon on the Mount, myself. But I would humbly point out that the Sermon on the Mount is not a set of rules which anybody can apply. It is an utterance of a transforming power to those whose lives have been transformed. A man must have been "born again" before he finds anything in the Sermon on the Mount that is practicable. I would say to myself and to the world: You cannot achieve Christian objectives with un-Christian hearts, and minds, and wills. You are "seeking," as negroes describe the desire for religious transformation. But you have got to "come through," as the negroes describe religious conversion.

A lot of us would like to borrow the power of Jesus to use for our own selfish ends. I see signs of this in myself and in people in general.

But it will not work that way. We have got to put first things first. The basic law of the abundant life, personally, economically, politically, socially, spiritually, is "Seek ye first His kingdom and His righteousness; and all these things shall be added unto you."

Our minds today are entranced by the possibilities of collective action. We hope by preaching, teaching, voting, and organizing to arrive at better things. But, so far, the application of this basic law has not been to a collective mass. It has been to individual minds and hearts. One man with God is the eternal match for the world. The possibility of all men with God is always there, but on one condition,—conversion one by one.

Forms of conversion vary so much, methods of bringing people to religious experience vary so much, that I confine myself to one: the simple habitual sincere reading of *The Bible* from cover to cover. Whenever and wherever men have thus gone back to *The Bible* they have gone forward in practical as well as in spiritual affairs. The atomic bomb scares us. *The Bible* will scare us too. But it alone presents that perfect love which casteth out fear.

Police Executives

(Continued from page 7)

E. R. Leary, Capt. of Detectives, Durham; W. B. Lentz, Lt., SHP, Asheville; E. V. Leonard, Chief of Police, Carolina Beach; Stanhope Lineberry, Chief of Mecklenburg County, Charlotte; F. N. Littlejohn, Chief of Police, Charlotte; L. T. Lucas, Chief of Police, Farmville; V. R. Mallard, Sgt., SHP, Smithfield; W. F. Martindale, Police Dept., Asheboro; T. R. McMillan, District Forest Ranger, Fayetteville; M. N. McRainey, Chief of Police, Red Springs; T. S. Meeks, Chief of Police, Leaksville; L. E. Midgette, Chief of Police, Cary; A. T. Moore, Chief Officer of A.B.C. Board, Fayetteville; S. D. Moore, Sgt., SHP, Charlotte; W. M. Nail,

(Continued on page 13)

Institute Answers to Official Inquiries

PRIVILEGE LICENSE TAX Municipal Taxation of Dry Cleaning Businesses

Inquiry: What license taxes may town A levy on dry cleaning plants established within town A?

Answer: Section 105-74 of the General Statutes permits cities and towns under 10,000 population to levy a license tax not in excess of \$25 on all persons, firms or corporations engaged in operating a dry cleaning plant within the municipality. Cities and towns of 10,000 population and over may levy a license tax not in excess of \$50.

Inquiry: What license taxes may town A levy on the *soliciting* of dry cleaning business in town A (in which there is a dry cleaning plant) by a firm whose plant is in town B?

Answer: Section 105-74 of the G.S. permits cities and towns of under 10,000 population to levy a license tax not in excess of \$25 on all persons, firms or corporations engaged in soliciting dry cleaning in any city or town when the actual cleaning is done outside the town in which the soliciting is done. Cities and towns of 10,000 population and over may levy a license tax not in excess of \$50.

BOND ELECTIONS

County Bonds to Finance the Erection of School Buildings and of a Public Auditorium

Inquiry: Who officially conducts these elections to issue these bonds in a county?

Answer: The Board of County Commissioners (G.S. 153-93). They appoint registrars and judges (G.S. 153-94), publish notices of the election (G.S. 153-95), and canvass the returns (G.S. 153-97).

Inquiry: Because there are two orders to be voted on, is it necessary to have two separate registrations?

Answer: Probably not. G.S. 153-93 allows several orders to be voted on at the same election. We have been unable to find any statute or decision requiring two separate registrations.

Inquiry: What majority is required to carry each of these two elections?

Prepared by

DAVID H. SCOTT

Assistant
Director
Institute of
Government



Answer: (1) A public auditorium is probably in the class of "non-necessary expenses." [See *Twining v. Wilmington* 214 N.C. 655, 200 S. E. 416 (1939), and *Adams v. Durham*, 189 N.C. 232, 126 S.E. 611 (1925)]

To carry this bond election the affirmative vote of a majority of the registered voters would be necessary—(See Article VII, section 7 of the N. C. Constitution and G.S. 153-92.)

(2) The Supreme Court has taken the view that the creation of school houses by a county in the exercise of its function as agent of the State in carrying out the Constitution's mandate in Article IX, Section 2 to maintain a public school system, is not subject to the "necessary expense" inhibition of Article VII, section 7. *Bridges v. Charlotte*, 221 N.C. 472, 20 S.E. (2nd) 825 (1942). *Frazier v. Comrs.*, 194 N.C. 49, 138 S.E. 443 (1927), *Tate v. Board of Education* 192 N.C. 516, 135 S.E. 336 (1926).

Assuming, however, that the school bonds are to be submitted to a vote, either because the constitutional county debt limit would be exceeded by their issue, or because the board has decided in its discretion to submit the issue, it is our opinion that an affirmative vote of the voters voting on the issue would be sufficient to carry the issue. We believe this would be in line with provisions of Article V, section 4 of the State Constitution.

RECREATION ORDINANCE

Inquiry: Under the existing state laws on recreation does a city council have the power to adopt a recreation ordinance without a special election?

Answer: Yes. A city governing board has power to adopt a recrea-

tion ordinance without a special election. Authority to act in this field is specifically granted to local units by G.S. 160-155 through 160-164.

But note!—it is where such an ordinance gets into the question of spending public money for recreation that there comes into the picture the constitutional prohibition against spending tax money for non-necessary expenses without a vote of the people.

G.S. 160-156 says: "—the creation, establishment and operation of a recreation system is a governmental function and a necessary expense as defined by Article VII, section 7, of the Constitution of North Carolina."

But the Supreme Court, which has the final say in interpreting the constitution, has said:

"The declaration by the General Assembly and the finding by the Board of Commissioners of the city of Raleigh, that both the contract and the tax are for an expense which is necessary for the city of Raleigh to incur is not conclusive upon the courts of this State; both, however, are persuasive, and it appearing that both are made in good faith, such declaration and finding are entitled to serious consideration by the courts in deciding the question presented by this appeal". *Martin v. Raleigh*, 208 N.C. 369 at 376 (1935).

In 1936 a taxpayer sought to restrain the city of Durham from issuing \$25,000 worth of bonds for public parks and playgrounds. The court held that the bonds were for a necessary expense and did not require a vote of the municipality, *Atkins v. Durham*, 210 N.C. 295 (1936). But the court pointed out that Durham was a thickly populated industrial city, and that therefore such recreation facilities were necessary expenses for Durham. Consequently, recreation facilities may not be necessary expenses for smaller, less thickly populated and less highly industrialized municipalities.

(Continued on page 14)

Municipalities And The Law In Action

By W. M. COCHRANE

Assistant Director, Institute of Government

Edited by Charles S. Rhyne. Washington: National Institute of Municipal Law Officers, 730 Jackson Place, N.W., Washington 6, D. C. 1946. \$10.00. Pages 565.

The 1946 Edition of *Municipalities and the Law In Action* is a cross-section view of the wheels and cogs of municipal governmental machines all over the land, 1945 model. Written by practicing attorneys out of the stuff of their daily experience, and the ninth of a series annually published by the National Institute of Municipal Law Officers, this volume brings to the practitioner or student of municipal law a sequence of action shots which lay bare the working of modern municipal governmental machinery, showing the areas of stress and strain, the areas of conflict and co-operation with state and federal governmental agencies, and the areas of distinct municipal achievement in 1945.

1945 was a year of shifting emphases on city government problems. The task of providing for invading armies of servicemen on leave from nearby army and navy installations became the task of finding homes and jobs for returning veterans. Post-war planning, earlier attacked by some as a time-consuming luxury in the war-time years, suddenly became a here and now proposition. The worries involved in purchasing fire engines under priority rules were replaced by the difficulties encountered in buying surplus war property from the government and in buying from manufacturers frantically reconverting to a peacetime production harassed by strikes, materials shortages and the threat of inflation.

Most of the subjects discussed were old acquaintances, if not old friends: Federal-city relations; city-state relations; annexation of unwilling territory outside cities; taxation and revenues; municipal revenue from federally-owned property; municipal tort liability;

zoning and planning; municipally-owned utilities; sewage disposal; and municipal bond issues. Some of them recognized new trends and methods and situations born of the war or developing in the last few years: federal claims to tide or submerged lands; right of municipal and public utility employees to strike; municipal law enforcement and strikes, and city liability for riot damage; labor union contracts and cities; public housing; municipally-owned parking lots; surplus property and cities; airport legal problems; and a proposed bill of rights for cities in a triple form of government.

Federal-City Relations—The traditional concept of the American system of government as being dual in nature, with federal and state governments and their respective spheres of sovereignty, is giving way to the notion of trinity—with federal, state and city governments becoming increasingly equal partners, say these whose life work is in municipal government. Bearing witness to their philosophy are the growing number of federal laws extending federal aid not only to the states or to the cities through the states, but directly to individual cities themselves. The Federal Aid Highway Act of 1944, which Congress brought into effect by resolution in October, 1945, was one, and "since this was the first time in the 29 year history of the Federal Aid Highway Program that cities have been able to participate, it was necessary that each state adopt legislation, and that city charters be revised, in order for cities to share in the money." Cities were also affected by 1945 federal laws concerning pollution of streams, federal aid to public works planning, federal aid to hospitals and public health centers, federal housing programs, federal aid to recreation and to school lunch programs.

City-State Relations—Chief questions of interest involving city-state

relationship concerned: the sharing of state taxes with cities, with the municipal law officers evidently feeling that there is a trend toward a level of distribution fairer to the cities; urban representation in state legislatures, with municipal efforts in Minnesota failing to succeed in obtaining fairer representation, and with the situation in other states remaining about the same; home rule, with progress being made in Georgia and Missouri by constitutional amendment (a North Carolina source was quoted on the question of home rule: "Our relations are very pleasant. They (the legislature) get the revenue, we get the bag. We raise hell to no avail, while they sit back and laugh..."); and state-wide retirement systems, with nine states adding their names in 1945 to the list of states with such systems providing for municipal as well as state employees, bringing the total to 22.

Taxation and Revenue—The year brought new sources of tax revenues to some cities, took some old sources away from others. Maryland extended to Baltimore blanket authority to tax anything the state could tax; Washington cities have moved into the admissions tax field abandoned by the state; many states increased the proportion of the cities' share of state taxes. But Michigan took away from city tax rolls all oil-powered commercial water craft, a serious loss to some cities; and Maryland, Oregon and Tennessee have entered the field of licensing a number of businesses formerly licensed by cities.

All through the year cities found themselves in continued sound financial condition thanks to increased assessed values, availability of new revenues, and decreased indebtedness.

Municipal revenue from Federally-owned Property—Although federal payments in lieu of taxes ease part of the burden arising from loss of municipal revenues where

extensive federally-owned property is located within a municipality, many federal properties are subject to no such "in lieu" payment arrangement. But the chief contention of the cities is against the frequent situations where federal property is leased or sold under contract of purchase, with title technically remaining in the United States, and with private individuals or corporations escaping taxation under the cloak of governmental immunity to taxes.

Municipal Tort Liability—The trend is toward stricter accountability of cities to individuals for personal injuries sustained as a result of municipal negligence. The cases discussed here show that judges and juries are increasingly sympathetic to the claims of injured persons against municipalities, despite the ancient protective cloak of governmental immunity still theoretically freeing municipal governing bodies from tort responsibility except where they act in a proprietary or corporate capacity. Best defense against such suits is listed as a showing of contributory negligence, carefully made by the city attorney.

Zoning and Planning—Municipal zoning and planning talk in 1945 reflected the impact of the atomic bomb on the thinking of men. The City of Tomorrow is an underground maze, or a narrow and long affair built along a superhighway, or it is much like the conventional city of today—depending on which expert you choose. The more radical prophesies grow, of course, out of thinking in terms of possible atomic war. But city planners are also looking toward the day when atomic energy will light the cities and drive the wheels of industry.

Other scientific developments were becoming factors in city zoning and planning last year. In Des Moines the question of permitting television towers in residential areas was answered in the affirmative. Airport zoning was a subject widely discussed and studied, now that many military airports are being turned over to community control.

War-time variances of zoning regulations, which were permitted to meet emergency conditions, have been widely continued, particularly

with respect to housing. The dangers involved in allowing continuance of non-conforming uses to the point that they become vested interests have generally yielded to the pressures of material, housing, business and industrial space shortages. On the other hand, strict interpretation of zoning ordinances has added to the difficulties of new construction in many places.

Municipal Bond Issues — Since 1939, when President Roosevelt proposed that future issues of municipal bonds should be made subject to the income tax (which proposal the Congress ignored), the Treasury Department has sought to achieve the objective by assessing bondholders of the Port of New York Authority and of the Triborough Bridge Authority. Municipal finance officers, recognizing that elimination of income tax exemption of state and municipal bonds will increase interest rates, have been watchfully interested in the progress of the New York cases through the Tax Court, which held that these Authorities are political subdivisions of the states and that therefore it was not necessary to decide the constitutional question; through the Circuit Court of Appeals, which affirmed the decision; and to the Supreme Court, which denied the Government its application for a writ of certiorari.

"It is of interest to give a moment to the reasoning of the Tax Court. The Court held that these authorities are political subdivisions because of their nature, i. e., they are politically organized and are public services. They are also exempt because of the nature of their activities which were held to be governmental in character. After decision of these cases, there remains a question as to what are governmental activities as distinguished from proprietary activities. It is to be hoped that it will ultimately be held that a public agency which is doing anything that the state believes necessary in the public interest is a political subdivision."

Financing of Sewage Disposal Facilities—"It has been truthfully stated that water is generally pure until it is defiled by man. As population increases . . . polluted streams

become a serious health menace. More than fifty years ago this problem presented itself in the East, and about twenty-five years ago in the Middle West. It has now spread to the Northwest, the Pacific Coast, and the South . . . Health Departments . . . are now more insistent than ever that stream pollution . . . be abated."

The hitch is that nobody wants to pay for what everybody admits benefits everybody. At Spokane, for example, the State Health Department has ordered the city to quit dumping its sewage into the Spokane River, with the city's voters saying "No" three times to the proposition that \$4 millions in bonds be issued to finance a sewage disposal system. The question is, "How should it be financed?"

Methods of financing initial construction, varying as state laws vary, are listed: general bond issues which are in the nature of a mortgage on all the city's property, and usually require special elections because of statutory debt limitations; revenue bond issues, payable out of the earnings of the system; Sanitary District or Drainage District method, where a corporation separate from the city handles the problem; and the special assessment method, based on taxing property in proportion to the benefits received from the system. These are the old ways; but a call is sounded for Congress to come in with grants-in-aid, on the theory that "elimination of stream pollution is clearly a subject upon which Congress should act."

Right of Municipal and Public Utility Employees to Strike—"The question of unionism is not at issue. City attorneys throughout the country are of the opinion that municipal employees have the right to organize, unless expressly prohibited by statutes . . . These public employees' unions have the right to present the grievances of the public employees to the duly constituted authorities and may bring public pressure to bear in attempting to press home their demands for bettering wages and labor conditions."

But municipal law officers do not believe public employees have the right to *strike*, or to picket government buildings, "peacefully" or oth-

erwise. Their attitude is shown in the following statements: "A general strike of city employees would be a blow at the very heart of free government... if a number of such employees engage in work-stoppage, then all the elements are present of a conspiracy against government... their right to strike is merely the individual right of work-stoppage—nothing more... Any attempt to curtail necessary public services by a general strike would go beyond the right of mere work stoppage and would enter the field of anarchy. Its very object and result would be the complete breakdown of a city's governmental function."

The argument is also made that labor contracts with municipalities are illegal in the absence of specific authorization. Where contracts with labor unions are permitted, the right to strike is usually renounced by the union, as is the case at Baltimore.

City Liability for Strike Damage—The liability of cities for injury to person and property because of strikes is not a common law liability, and the right of recovery exists only by virtue of statute. The states where such statutes exist are not given, other than Wisconsin, and there the person injured must not only have been guilty of no contributory negligence himself, but must have also "used all reasonable diligence to prevent the same, and shall have immediately notified the Mayor or Sheriff after being apprised of any threat of or attempt at such injury." New York's statute permitting recovery against cities was changed under the War Emergency Act, eliminatng liability against cities, and the municipal law officers recommend this as an ideal solution to the problem, saving liability of particular officials for their actual negligence.

Public Housing — The stake of municipal government in the federal public housing programs is larger than an interest in solving immediate and acute housing shortages. It is also wrapped up in the hopes of city planners to seize present opportunities for slum clearance, with resulting improvement in public welfare and health conditions. Listed by the municipal

law officers as chief problems in achieving these goals were problems of federal-local cooperation; payments in lieu of taxes; tax exemption of public housing projects; local territorial jurisdiction, where projects are federally built and owned.

Municipally-Owned Public Parking Lots—Under a law passed by the Kansas legislature in 1941, Kansas cities of the first class were authorized to condemn and improve property for public parking purposes, in commercial, light industrial and industrial districts. Kansas City has gone into public parking on a large scale, and the report of experience there claims resulting decrease of traffic congestion and traffic accidents, because of elimination of much on-street parking. Costing (when fully completed) about \$400,000, in ten years their six parking lots will be paid for by special assessments, and by general taxes to retire the bonds issued, with double-decking possible if later traffic increases make it necessary.

Airport Legal Problems—Municipal ownership of airports began to increase throughout the country with the end of 1945 and the war. The resulting legal problems are many, including airport zoning, with 17 states passing zoning laws last year governing construction and location of structures within airport hazard areas; taxation, with an Indiana decision holding that income derived by a city from operation of its airport is subject to state income tax, because such operations were proprietary in character; and in the acquisition of airports, with most courts upholding the constitutionality of acts permitting municipal ownership—but in South Carolina the Supreme Court held otherwise, holding unconstitutional an act which created an aeronautics commission in Williamsburg County with power to borrow on the county's obligation money to build an airport. There the court held that an airport is not a "public building", and that the expenditure of funds for an airport is not for an "ordinary purpose," as those phrases were used in the South Carolina constitution in connection with municipal debt.

Clerks of Court

(Continued from page 4)

tention to that point, the full significance of the "Crisp Act" was generally overlooked by the bench, bar and clerks alike: those provisions brought back into play in civil actions a large number of provisions which had been on the books for fifty years but which had lain dormant and unused for those fifty years. And in the meantime, generations of lawyers had become accustomed to taking every question of law or fact to the judge at term time, all parties mutually disregarding the clerk's powers in the premises. The custom and practice continued, and to this day a motion to strike parts of pleadings and other motions of a preliminary or dilatory character are regarded as automatically holding any further proceedings in abeyance until the next term of court. In fact, many lawyers use such motions quite frankly for no other purpose than delay, whereas, under the provisions of the present procedural statutes, no delay of any consequence could be achieved thereby.

In closing, Mr. Abbott suggested that the full exercise by the clerks of their powers in civil actions would greatly expedite the handling of civil litigation, would substantially aid in keeping trial dockets current, and would help still criticism of the judicial process.

Charles T. Boyd—The Clerk and the Bar

The afternoon session closed with an address by Charles T. Boyd of the Guilford County bar on the relationship between the clerks of the Superior Court and the bar. He pointed out that the clerk's work falls into the four major classifications of special proceedings, civil actions, probate matters and juvenile matters. In many of these matters the clerk is the "court" and has extensive responsibilities and commensurate powers. While clerks are a vital and important part of the court, lawyers are officers of the court and transact a great deal of business with the clerks. It is essential to the efficient functioning of the court system that judges, clerks and lawyers get along to-

gether, understand each other, and become familiar with the powers and duties of each other.

Mr. Boyd suggested that it is the clerk's responsibility to study his duties, organize his office efficiently, deal fairly and impartially with all, and regard his office as an instrumentality of justice. Lawyers have similar duties as officers of the court and should employ candor and frankness in dealing with clerks. Through understanding and cooperation, much can be accomplished toward increasing efficiency in handling litigation and other legal matters. The speaker cited as an example of worthwhile cooperation the preparation of uniform and legally correct forms for use in the clerk's office, thus getting rid of many obscure points which often cause difficulties and delays.

Banquet and Entertainment

The annual banquet, followed by a dance, was held Thursday evening beginning at 7:00 p.m., with approximately seventy clerks and guests present. Joseph P. Shore, host clerk, served as toastmaster at the banquet, and the principal speaker was State Senator George T. Penny of Guilford County.

The speaker was introduced by Superior Court Judge H. Hoyle Sink, resident judge of the Twelfth Judicial District. As a preliminary to his introduction, Judge Sink took occasion to praise the character and quality of performance of the Superior Court clerks of the State, and especially those of his own district with whom he comes into most frequent contact.

Senator Penny's address was well on the humorous side and upheld his reputation as a first rate story teller. But he closed his talk on a serious note with a plea to North Carolinians to encourage more small, independent businesses and to take other steps toward raising the State's per capita income. He also praised the work of the Superior Court clerks.

During the course of the banquet a number of guests were recognized and made brief remarks.

Proposed Legislation

The concluding session Friday morning was given over to the consideration of resolutions and me-

morials and to a discussion of a legislative program. The discussion of proposed legislation was conducted jointly by Ben T. Ward, President of the Greensboro Bar Association, and Lawrence E. Watt, formerly a member of the Attorney General's staff and Secretary of the General Statutes Commission. Mr. Watt, in preliminary remarks, discussed the work of the General Statutes Commission, which is limited in scope to the task of statutory clarification, and of various special commissions, such as the commission on Domestic Relations under the chairmanship of Forsyth County Clerk W. E. Church, which are working toward the improvement of the laws covering various subjects. Mr. Watt stated that suggestions as to needed legislation made by clerks and other officials and citizens are welcomed by and useful to all the various commissions, but that while an interchange of suggestions and cooperation should continue, the Clerks' Association should sponsor its own legislative program.

Among the suggestions for legislation to be considered by the Legislative Committee of the Association were the following:

- Liberalizing the widow's share in personal property in cases of intestacy in small estates.
- Reducing the cost of administration in smaller estates and permitting small sums of money or tangible personal property to be paid or turned over by fiduciaries or the clerk of court to minors of the age of 18 and over.
- Considering abolishing the distinction between real estate and personal property in estates.
- Permitting a widow to obtain her year's allowance without the necessity of first dissenting from the will.
- Clarifying legislation with respect to the appointment of "ancillary" administrators and guardians and as to the proper method of disbursing funds in the hands of such ancillary representatives.
- Legislation fixing some legal date for the death of one who is declared dead upon the presumption arising from an absence of 7 years, in order to have some specific date which may be used in the settlement of estates and other matters.

- The rewriting of the oath of attesting witnesses to a will in G.S. 11-11 to leave out reference to the mental condition of the testator.

- Legislation to harmonize and clarify the provisions of G.S. 28-76 and 28-77 relative to confirmation of sales of personal property by executors and administrators.

- Clarifying legislation in respect to the lien of doctors and hospitals against recovery in personal injury cases.

- Clarifying legislation with respect to the sale of real and personal property under a power contained in a will, without Court order.

- Legislation clarifying the authority of a clerk to use photostatic machines and possibly other mechanical recording devices.

The foregoing and other subjects were discussed and referred to the legislative committee with power to study the proposals and draft and submit legislation in its discretion. The legislative committee is composed of J. P. Shore, chairman, J. N. Sills, J. Lester Wolfe, W. E. Church, George R. Hughes, E. O. Faulkner, W. G. Mordecai, Charles Lamm, W. H. Young, and C. G. Smith.

NEW OFFICERS

The nominating committee composed of J. Lester Wolfe, chairman, J. N. Sills, and E. O. Faulkner, nominated the following officers for the ensuing year, all of whom were unanimously elected: Joseph P. Shore, Guilford county, president, L. C. Hand, Gates county, first vice-president, E. A. Houser, Cleveland county, second vice-president and W. E. Church, Forsyth county, secretary and treasurer.

The program and entertainment committee was composed of Joseph P. Shore, J. Lester Wolfe, and W. E. Church.

The time and place for the 1947 annual convention was left to be decided upon by the executive committee.

Police Executives

(Continued from page 8)

Sgt., SHP, Asheville; J. E. Oakes, Capt., Police Dept., Greensboro; W. C. Owens; Sgt., Police Dept., Elizabeth City; W. E. Perdue, Sgt., Police Dept., Asheville.

J. V. Peterson, Chief of Police, Smithfield; R. C. Powell, Comm. of Public Safety (Continued on Inside Back Cover)

Index to Local Laws

(Continued from page 5)

here I am now, getting ready to retire this year.

"When the General Assembly would be in session, I would help the members write their bills. I remember the first big bill I ever wrote—it was a workmen's compensation act. Course, I didn't really do much but change "Ohio" to "North Carolina" wherever it appeared in the Ohio act which they were modeling our law after, but I wrote the act. I didn't always agree with what the bills provided, and I told the legislators so; but I wrote the bills anyway. Local bond issues had their hey-day during those years. Cities and counties were building roads and schools and waterworks and I don't know what all. It got so that a legislator could give me the name of his county and the amount of bonds he wanted authorized and I could almost write the bill authorizing the issue with my eyes closed.

"Lots of times a Representative or a Senator would come in and want to change the salary of the sheriff in his county, or want to extend the corporate limits of a town in his county. You know, they were passing an awful lot of local bills in those days. Well, every time he would be sure-certain there had been an earlier act fixing the salary or establishing the boundaries of the town, and he would want to amend that act. But never a one of them would know what year the act was passed. There wasn't any index and there was no way you could find the prior act in a hurry. Why, lots of times the office would spend a day or two looking for one little act.

"I decided that I would start making me an index of the local laws enacted in the last few sessions just so I could find these acts when the members came in wanting to amend them. I just wanted it for my own use; I knew it would save me time and trouble. I went to the index in the backs of the volumes and began entering each act indexed there on a card. But that didn't work so well; the indexes weren't complete enough. I saw that I had to take each volume and turn through it page by page entering each act on

a card. I put the name of the county on the card, the chapter number and the year, and a little something of what the act was about.

"I started indexing with the laws of 1915 and worked forward. We were publishing the supplements to the Consolidated Statutes in those days, and I helped with the work on them after each Legislature. The Library was transferred to the Attorney General's office and we moved across the hall into his offices here in the old Supreme Court building. Then when the Department of Justice was set up in 1939 and the Division of Legislative Drafting and Codification was established, the bill-drafting part of our work went to that agency and the other phases of our work were assigned to the Secretary of State's office. Mr. Eure put the work under his division of Publications, and we moved back here to our old office.

"I had been going ahead with my indexing. There certainly are a lot of local acts in those books. Other folks began using the index, such as it was, and they began to talk of publishing it for general use. The General Assembly passed an act in 1943 authorizing the publication of the index. I had done up through 1937. So then Mr. Jones and I—he was heading the Division of Publications for Mr. Eure in 1942 and '43—went back to 1900 and filled in the gap between 1900 and 1915 and brought my cards up to date. We checked over the old cards for mistakes and prepared them for publication. I checked through the General Statutes for acts which exempt certain counties from their provisions—they're just the same as local acts, you know—and we incorporated them into the index.

"And now the cards have all been converted into galley proofs, and when the printing is all done the index volume will be distributed as provided in the act authorizing the publication. It's supposed to come out some time this fall. They say it will be about 700 pages long. All acts pertaining to a county are indexed under the name of the county according to their subject matter, and acts pertaining to the towns and cities in the county are indexed under the name of the town or city

alphabetically according to their subject matter.

"No, I didn't know what I was getting into when I started this thing."



Institute Answers

(Continued from page 9)

In 1938 the court in *Twining v. Wilmington*, 214 N.C. 655, held that the following bonds were for "non-necessary expenses"—bonds for building and equipping a municipal auditorium, for acquisition of lands and establishing and equipping public parks and playgrounds, for erecting and equipping a municipal building to be used in part for a public library, and for acquisition of lands and erection thereon of a suitable building for recreation and athletic purposes.

In October, 1945, the Attorney General received the following inquiry: "Does a municipality have authority to appropriate funds for the maintenance and operation of recreation centers?" The answer of the Attorney General was as follows:

"Appropriations for recreation facilities have been held to be both a necessary expense and to require a vote of the people. H.B. 828 (the Recreation Enabling Law, General Statutes 160-155 through 160-164) enacted at the 1945 session of the General Assembly declares that the purposes therein authorized are a governmental function and a necessary expense. While this declaration is not binding upon the Court, it is persuasive, and when an act is made the law, it is 'the law' unless repealed by the legislature or declared unconstitutional. I am of the opinion that our court would hold a tax levied for playgrounds and recreation facilities under the provisions of H.B. 828 constitutional, but it depends to some extent on the situation in the individual communities whether the establishment of a recreation center would be considered a necessary expense. The levying resolution should meet the requirements in *Atkins v. Durham*, 210 N.C. 295 (1936), that the establishment of such a project is necessary to preserve the health, safety and good morals of the inhabitants of the community."

The Attorney General Rules

Digest of recent opinions and rulings by the Attorney General of particular interest to city and county officials.



To J. M. Baley, Jr.

Additional material on OPA ceilings at judicial sales, with reference to Popular Government summary of Attorney General's ruling in May, 1946.

(A.G.) The opinion expressed by the Attorney General was that if ceiling prices are fixed by OPA and those ceilings are made applicable to judicial sales, the ceiling prices so established must be complied with in judicial sales in North Carolina. *Case v. Bowles*, 66 Sup. Ct. 438. The Attorney General did not express an opinion as to whether OPA ceiling price regulations were made applicable to judicial sales in North Carolina by action of the OPA. He merely declared that if OPA had placed a ceiling price on articles to be sold at judicial sales such ceiling prices should be complied with.

HARRY
McMULLAN

Attorney
General
of
North
Carolina



second paragraph of G.S. 18-76 should be construed in the light of the first portion of the paragraph. The first part requires an applicant for license to sell beer and wine outside a municipality to show the distance to the nearest church or public or private school from the place at which the applicant proposes to sell at retail. This indicates to me that the section deals with the place to be licensed and that it must not be within 300 feet of any public or private school or church building, irrespective of whether such building is located within or without the corporate limits.

27. Taxicabs

To J. T. Maddrey.

Inquiry: May a city refuse to license a nonresident to operate a taxi within the city's limits?

(A.G.) G.S. 160-200, subsection 36a, enacted by Sec. 2 of Ch. 564, Session Laws of 1945, provides that the governing body of a city may grant taxi franchises on such terms as it deems advisable. It authorizes cities to require licenses before operation is permitted. This statute permits the city to limit the number of taxis that will be licensed, according to the public convenience and necessity, in the judgment of the governing body. Thus, in my opinion, refusal of a license should be on the basis of the public interest and not on the arbitrary ruling that nonresidents cannot be licensed.

68. Traveling shows

To Henry B. Edwards.

Inquiry: What is meant by the word "week" in Sec. 107 of the Revenue Act (carnivals)—calendar week or seven consecutive days?

(A.G.) Ordinarily, where the word "week" is used, a calendar week is meant unless a contrary meaning is obviously intended. 62 C.J. Time, sec. 22. I can find no such contrary meaning in Sec. 107 of the Revenue Act, and this meaning is the one placed on the word by the Department of Revenue, an interpretation which is entitled to great weight. *Cannon v. Maxwell*, 205 N. C. 420; *Valentine v. Gill*, 223 N. C. 396.

IV. PUBLIC SCHOOLS

B. Powers and Duties of Counties

4. Supervision over capital outlay expenditures in city unit.

To John D. Shaw.

Inquiry: May a county appropriate funds for capital outlay purposes on school sites the title to which actually vests in the city and not in the city school commissioners?

(A.G.) G.S. 115-88 prohibits a county board of education or the board of trustees of a city administrative unit from entering into any contract for the erection or repair of any school building, unless the site on which it is located is owned by the board and the deed to the same properly registered and deposited with the Clerk of Superior Court; and it is further provided that the title to the site in any administrative unit aided by the county, as provided in G.S. 115-88, shall be vested in the board of trustees of the unit aided. Therefore, as a pre-requisite to the county providing funds for the erection or enlargement of school buildings in your case, the city should convey to the city school commissioners the property on which such buildings are to be erected or enlarged. I think it entirely proper for the city to include in such deed a reversionary clause which might be agreed upon by the city and county authorities.

25. Use of county funds

To O. P. Johnson.

Inquiry: Where the bids received for erection of a school building all greatly exceed the appropriation therefor, may the county board of education proceed to erect the building with day labor under its own supervision without further advertisement and bids?

(A.G.) The Supreme Court has not passed on this and might construe G.S. 143-129 strictly and hold any contract not meeting its requirements void. I have, however, expressed the opinion that in a case involving preservation of health, thus creating an emergency, after the governing body had complied with the statute as to advertisement of bids, it might be that such governing body could proceed to construct the project by day labor under its supervision without further advertisement for bids. If, in such a case, the project was not completed within the appropriation or the lowest bid, the individual members of the board might be liable for the difference.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

A. Contractual Powers

25. Joint undertakings with other units

To Cecil E. Cowan.

Inquiry: Where a health unit composed of three counties has been disbursing all funds of the unit through the county accountant's office of one of the counties, is

I. AD VALOREM TAXES

B. Matters Affecting Tax Collection

12. Penalties, interest—right of county to remit

To Harley B. Gaston.

(A.G.) The board of county commissioners has the authority to remit the penalty for failure to list property for taxes provided in G.S. 105-331, subsection 3, if in their opinion it is right and proper to do so. This stems from the fact that the commissioners have the right to extend the time for listing, as well as the right to compromise and adjust any claims for such failure.

18. Delinquent taxes—who may collect

To R. L. Smith.

Inquiry: Under the general law, upon whom devolves the duty of collecting taxes remaining unpaid after the sheriff's sale and after his settlement with the commissioners?

(A.G.) In the absence of any local statute, G.S. 105-390 provides that such taxes in counties having sheriffs as tax collectors shall be charged to such other county officer or employee as the governing body may designate to perform the duties of delinquent tax collector. If the tax collector is the sheriff, it is my opinion that the commissioners should designate some county officer or employee other than the sheriff to act as delinquent tax collector. If the sheriff is not the tax collector, the statute provides that the delinquent taxes must be recharged to the collector.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

14. Privilege license—beer and wine

To J. F. Matthews.

(A.G.) I think the latter part of the

it proper for the three counties in the unit to turn over to the unit's health director the funds appropriated by the 3 counties, for disbursement by him through his office on the same basis as they are now disbursed?

(A.G.) I think the basic question here is whether the contribution of each county to the district health unit can be turned over to the unit for expenditure and still be within the requirements of the statutes fixing duties of county accountants and control of expenditures exercised by county auditors or accountants. Counties can enter into contracts with the State Board of Health for the formation of district health units and for the expenditure of funds for that purpose. Under the budgetary and accounting system used by district boards of health such contracting counties receive complete disbursement and budget reports from the district health unit. Under these circumstances, assuming the county accountant receives proper budgetary details, and assuming the officer of the health unit handling funds is bonded, it seems to me a county would be authorized to turn over funds to the county health director or other proper official of the district health unit. I am of the opinion that the county accountant has done his duty and complies with the County Fiscal Control Act when he sees to it that funds are available, according to the county budget and appropriation, to be paid according to the contract, and that his approval of any warrant for payment of such funds extends no further than approving a warrant drawn for the sum of money to be paid by the county according to the contract and that the approval and authority of the county accountant does not extend to any supervision over the district board of health as to its expenditure of funds, since the latter has its own responsibility.

B. County Agencies

10. ABC boards and stores

To George C. Franklin.

Inquiry: Where a county participates in a three-county district board of health, will this entire board of health or only the members thereof who represent the interested county be allowed to participate in the selection of the members of a county ABC board under G.S. 18-41?

(A.G.) Since there is no county board of health for a county participating in a district health set-up, it is my opinion that the ABC board members would have to be selected by the composite meeting of the board of county commissioners and county board of education without any health representatives. We believe that G.S. 130-66 (Cumulative Supplement) should be construed as repealing by implication that part of G.S. 18-41 concerning county board of health participation where counties combine and form a district board of health. An appointment made by the two remaining boards we believe to be legal, and if the Court should hold otherwise, persons so appointed would at least be de facto officers whose public acts could not be questioned collaterally.

J. Airports

To W. P. Staples.

(A.G.) G.S. 63-18 makes it a misdemeanor for any aeronaut or passenger while in flight over a thickly settled area to engage in trick or acrobatic flying or, except in landing or taking off, to fly at such a low level as to endanger persons on the surface. If the planes are flown in such

a manner as to materially reduce the value of property belonging to individuals and are flown so frequently in such a manner as to be a direct and immediate interference with the enjoyment and use of the land, it would probably amount to a taking of the land for which compensation must be made. *U. S. v. Causby*, 90 L. ed. (Adv. Op.) 971; *Delta Air Corp. v. Kersey*, 140 ALR 1352. While the North Carolina Constitution does not expressly prohibit private property from being taken for public use without just compensation, the principle that private property may not be so taken is grounded in equity and is part of North Carolina law, *Bennett v. Winston-Salem Ry. Co.*, 170 N. C. 389.

X. Grants and Contributions by Counties

18. Recreation center

To Fred P. Parker.

Inquiry: May a county make appropriations from its general fund to a joint city-county community recreation center?

(A.G.) If the appropriation involves no tax levy nor the contracting of any debt I believe the county may make such an appropriation from its general fund. G.S. 160-164 (Cumulative Supplement) provides that any two or more units (county, city or town) may jointly set up and operate a supervised recreation system and acquire, operate, improve and maintain property for it, the expense thereof to be apportioned between the units as may seem just and proper. G.S. 160-158 authorizes the governing body of any unit, as defined in G.S. 160-157, to exercise powers for recreational purposes, which powers include, among others, the power to provide, construct, etc., recreation centers and facilities (subsection (5)), and the power to appropriate funds to carry out provisions of the statute (subsection (6)).

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

K. Grants by Cities and Towns

4. Recreation facilities

To F. O. Carver.

Inquiry: May a municipality supplement the pay of a school coach during the school vacation months as a recreational director for the municipality?

(A.G.) If the salary of the person in question is to be paid from a surplus the city may employ him during the summer months and pay such salary as may be found necessary. However, our courts have held that in some cases appropriations for playgrounds are necessary expenses and in others that they are not. If the city should adopt the procedure set out in Ch. 1052, Session Laws of 1945, and establish a recreation commission, the teacher of athletics might be employed in connection with the city recreation program and receive such compensation as the governing body might determine. However, I do not think the city has a right to supplement the salary of a public school teacher since the State has assumed that burden. In the plan I suggest, the teacher's salary would not be supplemented, but he would be paid for services rendered to the city through its recreational program.

Q. Town Property

10. Sale of town property

To H. S. Woodson.

(A.G.) Assuming that the OPA has not adopted a regulation exempting this type

of sale from general OPA regulations, I think that the sale by a municipality of automobiles owned by it would be subject to OPA ceiling prices. In *Case v. Bowles*, 66 Sup. Ct. 438, the United States Supreme Court held that OPA ceiling prices are controlling on judicial sales notwithstanding any provisions of state laws requiring public sales to the highest bidder. I think this decision would control this type of sale, although a special regulation of the OPA now exempts judicial sales of autos.

T. City Health Matters Other Than School Health

To Dr. Carl V. Reynolds.

Inquiry: Does the statutory limit, as applied to cities, of \$1.00 tax to the \$100.00 property valuation, for revenue for the general fund, include revenue for public health expenditures? Can expenditures for health by cities and counties be made as expenditures for education without regard to the limitation imposed on the general fund?

(A.G.) I cannot find any authority that allows a city, by itself, to levy for public health purposes, unless the city includes the expenditure in its budget and undertakes to take care of it out of the general fund which is covered by the \$1.00 limitation (G.S. 160-402). G.S. 130-30 provides that joint city and county health departments may receive funds and that the cities and counties may levy special taxes for this purpose, but this does not permit a city standing alone to levy such a special tax. G.S. 160-229 permits a city to levy a special tax to cover a contract with hospitals for the care of the sick and afflicted poor, but this does not give authority for a specific levy for public health purposes generally. Expenditures for public health and the power to levy taxes for such a purpose are not on the same basis as education, since the requirements for maintaining schools for a certain period of time are governed by other provisions of the Constitution. Nowhere is a city given power to levy a special tax for public health purposes.

X. Ordinances

4. Zoning

To John D. Warlick.

Inquiry: Where a town passed an ordinance prohibiting the erection of filling stations along a certain street, beginning at a certain point on the street and extending "to the Town limits on said street," and said town later extended the town limits to include filling station property which had been operated as such for nearly five years and other business property, would the extension of the town limits have the effect of extending the operative powers of said ordinance so as to prohibit the operation of a filling station in the area which was outside the city limits when the ordinance was originally passed to protect a residential street?

(A.G.) If the ordinance in question is a zoning ordinance, then it would be governed by G.S. Ch. 160, Art. 14, which provides in G.S. 160-175 that "the boundaries of such districts shall be determined, established, and enforced and from time to time amended, supplemented or changed." In this case, the town limits constituted a boundary line for the zoning ordinance, and subsequent extension of the town limits would not change the original boundary of the zone set up by the ordinance. It is my opinion that the ordinance in question is a zoning

ordinance, and that the above is therefore applicable. Even if it were a police regulation, the same would be true—its application would be confined to a definite area. The doctrine that the ordinances of a town existing prior to an extension apply equally to the area and persons brought in by the extension does not apply, since it is limited to penal matters and questions of jurisdiction.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

B. Clerks of the Superior Court

100. Escheats

To George P. Burgwyn

Inquiry: Before turning escheats over to the University of North Carolina as required by G.S. 116-23, is the Clerk of Superior Court entitled to deduct from these funds the commissions allowed him under G.S. 2-26?

(A.G.) It is my opinion that under the wording of the two statutes referred to above the Clerk of Superior Court is entitled to the commissions set forth upon monies paid to him by virtue of his office, regardless of the fact that such sums are subject to escheat to the University of North Carolina.

D. Register of Deeds

9. Marriage—licenses and certificates

To R. G. Brooks.

This covers same problem as opinion given to Brooks in March and reported in Popular Government for April 1946, concerning right of Register of Deeds to issue duplicate marriage license from stub in his office.

(A.G.) On further consideration I am now of the opinion that Register of Deeds may issue duplicate marriage license from information on stub in his office, send it to minister performing ceremony, or deliver it to persons for whom issued, and mark it as duplicate. Minister could then certify that he performed marriage as required by statute and return duplicate to Register of Deeds, which could be filed as required by law. Since this would be only a duplicate of a lost marriage license, I do not think it would be proper to make additional charge for it.

L. Local Law Enforcement Officers

60. Powers of an officer.

To Oscar A. Wall.

Inquiry: Does a city officer or state patrolman have a legal right to lay speed entrapment?

(A.G.) I assume you refer to situations where a speed officer conceals himself and watches or checks the speeds of motor vehicles on certain sections of the highway. Entrapment has been defined as the instigation, or luring by an officer or another person for the purpose of prosecution, into the commission of a crime which the person had otherwise no intention of committing. The defense of entrapment is not available where the officer acted in good faith for the purpose of discovering a crime and merely furnished the opportunity for the commission of the crime by one who had the requisite criminal intent. I do not think the defense of entrapment can arise where officers watch the highway for speeders even when the officer conceals himself. Guilt or innocence still remains a question of fact or an issue that must be settled in the court upon the evidence of both parties.

Digest
Prepared
by
**SAMUEL R.
LEAGER**

Assistant
Director
Institute of
Government



62. Jurisdiction

To G. A. Jackson.

Inquiry: Does a police officer or township constable have authority to pursue a person who has committed a crime in his presence into another county and make an arrest without warrant when such officer is in hot pursuit of such person at all times?

(A.G.) The authority of a police officer to arrest without warrant any person who commits a crime in his presence extends only to that area within the limits of the town in which he holds office, he having the same authority within the town limits to make arrests as is vested by law in a sheriff. G.S. 160-21. His powers are purely statutory. *Wilson v. Mooresville*, 222 N. C. 283.

As to the constable, North Carolina holds that he has authority to make arrests anywhere in the county within which he is appointed. The hot pursuit statute, G.S. 15-42, permits a sheriff or his bonded deputies, when a felony is committed in any county of this state, either with or without process, to pursue the person or persons so charged, whether in sight or not, and arrest him or them anywhere in the State. Apparently the authority to cross county boundary lines in hot pursuit of a felon applies only if a felony has been committed, and the only persons authorized to cross such boundaries are the sheriff of the county in which the crime was committed and his bonded deputies.

The only other statute permitting peace officers to cross boundaries in hot pursuit is G.S. 18-45 concerning intoxicating liquors. Special enforcement officers appointed under that act have the same authority in their county as other peace officers, and are specifically permitted to cross county lines in hot pursuit and to arrest in another county anyone found to be violating the state prohibition laws. This law probably applies only to officers appointed under this act and other county-wide peace officers. It is extremely doubtful if a city or town policeman would have any authority under this act to cross his town line in hot pursuit.

X. PRIMARIES

B. Powers and Duties of Election Officials

22. Time of registration

To William B. Rodman, Jr.

Inquiry: Where a special election has been called without a new registration under G. S. 160-37, providing that the books shall be closed on the second Saturday before election, and G.S. 160-39, making the second Saturday before the election challenge day, must registration be permitted on the second Saturday before the election?

(A.G.) I am of the opinion that the books are open on the second Saturday before the election only for challenge and not for registration on that date.

XI. GENERAL AND SPECIAL ELECTIONS

To Henry A. McKinnon.

Inquiry: Is it necessary that the 15% of the registered voters who request an election on the question of the establishment and support of a free public library be parties who voted in the last election for governor?

(A.G.) The statute as rewritten (G.S. 160-65, Cumulative Supplement) uses the words "who voted in the last election for Governor." This does not mean, in my opinion, that the voters who sign the petition must necessarily have voted for governor in the last election, but the statute means that 15% of the number of voters who voted in the last election for governor must be signers. So far as I know there has been no court decision construing this statute.

40. Tie vote

To Henry A. McKinnon.

Inquiry: In case of a tie vote in a second primary for a county office, how is the nominee determined?

(A.G.) G.S. 163-142 provides that returns, canvass and declaration of result in a primary election and such other acts to be done in ascertaining and declaring results of a primary, unless otherwise provided, shall be done as near as may be for like acts in general elections, unless the rules of the State Board of Elections have changed the procedure. Since the State Board has not changed the primary law in this respect and since the primary law does not cover this situation specifically I believe that G.S. 163-91 pertaining to general elections will govern the primary situation. In other words, the county board of elections must determine the nominee.

Police Executives

(Continued from page 13)

ty, Raleigh; J. R. Pridgen, Sgt., SHP, Whiteville; A. A. Privette, Chief of Police, Wilson; I. N. Ramsey, Police Sgt., Morganton; George Roberson, Chief of Police, Roxboro; C. G. Rosemond, Capt., Police Dept., Durham; T. A. Sandlin, Sgt., SHP, Bryson City; Edward Scheidt, Special Agent of FBI, Charlotte; Paul M. Shore, Chief of Police, Jacksonville; Leonard T. Simmons, Sgt., Police Dept., Granite Falls; W. T. Sloan, Chief of Police, Chapel Hill; James R. Smith, Lt., Police Dept., Wilmington; Walter W. Spence, Chief of Police, Elizabeth City; C. C. Stoker, Chief of Police, High Point; W. W. Stone, Sgt., SHP, Greensboro; R. J. Stroop, Sgt., Police Dept., Gastonia. Ossie L. Sutton, Chief of Police, Marion; James R. Tanner, Chief of Police, Greenville; J. R. Teague, Capt., Police Dept., High Point; J. R. Thomas, Chief of Police, Rocky Mount; M. M. Thompson, Captain, Police Dept., Durham; Richard W. Turkelson, Chief of Police, Reidsville; Ruel W. Tyson, Sheriff, Pitt County, Greenville; J. E. Walker, Chief of Police, North Wilkesboro; Karl M. Warlick, Chief of Police, Valdese; A. W. Welch, Sgt., SHP, Ahoskie; J. L. West, Chief of Police, Lenoir; C. R. Williams, Sgt., SHP, Washington; S. L. Willard, Sgt., SHP, Graham; W. Robert Wersley, Chief of Police, Tarboro; John W. Yandle, Capt., Police Dept., Charlotte.

CALENDAR OF DUTIES

FOR CITY AND COUNTY OFFICIALS

Prepared by the Staff of the

INSTITUTE OF GOVERNMENT

This Calendar outlines the principal duties required by statute to be performed on definite dates; it does not include certain duties where the exact time for performance is not specified by statute.

References to local modifications are those found in the General Statutes. There may be others which are not listed on this Calendar.

SEPTEMBER, 1946

DAY	OFFICIAL	DUTY (Numbers in brackets refer to footnotes.)	REFERENCE TO LAW (To General Statutes, including the 1945 Supplement.)
On or before 1st	County Board of Education, Board of Trustees	File with Comptroller of State Board of Education certified statement of expenditures, salaries and other obligations due and payable during the month.	115-367
Each regular meeting of Governing Body.	Sheriff or Tax Collector	Report to Governing Body concerning taxes collected.	105-375
2	Sheriff or Tax Collector, Governing Body, Accountant	Day for complete settlement of all taxes, if tax certificates sold in August. [1]	105-390(a)(3),(b)
2	Sheriff or County or District Tax Collector	Day for tax certificate sale if advertising done in August. [2]	105-387(b)
5	Police department	Forward to department of motor vehicles all reports (on approved form) received during preceding calendar month of accidents involving property damage of \$25 or more or resulting in injuries or death to any person	20-166(d)
5	Local Registrar of Vital Statistics	Transmit, to State Registrar of Vital Statistics and County Register of Deeds, all birth certificates registered during August.	130-99
9	City Tax Collector.	Day for tax certificate sale, if advertising done in August.	105-387(b)
10	Coroner	Report to Department of Motor Vehicles the death of any person during preceding calendar month as result of accident involving motor vehicles and circumstances of such accident.	20-166(g)
On or before 10th	Clerk of Superior Court	Make monthly inheritance tax report to Commissioner of Revenue.	105-22
On or before 16th*	County ABC Board	Report and pay State tax on wine and liquor sales for month of August.	105-170; 103-5; 18-85
16	Sheriff or County or District Tax Collector, Governing Body	Report on sale and concerning insolvents, to Governing Body, if sale held in September. [3]	105-390(a)(1),(2)
23	City Tax Collector, Governing Body	Report on sale and concerning insolvents to Governing Body, if tax certificate sale held in September.	105-390(a)(1),(2)
30	Official Collecting Prepaid Taxes	1% discount period for 1946 prepaid taxes ends today. [4]	105-345(6)

[1] Exceptions in: Cumberland, P.L. 1941, c. 44, s.1 (e); Mecklenburg, S.L. 1945, c. 16, s. 6.

[2] Exceptions in: Mecklenburg, S.L. 1945, c. 16, s. 5.

[3] Exceptions in: Cumberland, P.L. 1941, c. 44, s. 1 (d); Mecklenburg, S.L. 1945, c. 16, s. 6.

[4] Exceptions in: Bladen, S.L. 1945, c. 335; Cumberland, S.L. 1945, c. 103 (City of Fayetteville also); Franklin, S.L. 1943, c. 293, s. 3 (only towns of Louisburg, Bunn and Youngsville; Surry, S.L. 1943, c. 710, s. 3 (Towns of Mt. Airy and Elkin also).

* G. S. 103-5 provides that where the day or the last day for doing an act required or permitted by law to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.